

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: BERTHAN MACAULAY

FAA Order No. 2003-4

Docket No. CP02SO0029
DMS No. FAA-2002-12591¹

Served: May 14, 2003

**ORDER DENYING REQUEST FOR EXTENSION
OF TIME TO FILE APPEAL BRIEF²**

Administrative Law Judge Burton S. Kolko issued an Order Assessing Civil Penalty in this case on February 6, 2003. The ALJ explained in that order that he construed Macaulay's silence³ as 1) a constructive withdrawal of the request for a hearing

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

² The Administrator's civil penalty decisions, as well as indexes of the decisions, the Rules of Practice in Civil Penalty Actions, and other information, may be accessed via the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. The decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available through LEXIS, Westlaw, and Compuserve. For additional information, *see* 66 Fed. Reg. 7532, 7549 (January 23, 2001) or the FAA Civil Penalty web site listed above.

³ When Macaulay failed to file either an answer to the complaint or a motion to dismiss the complaint, the agency attorney filed a Motion for Decision on the Pleadings or in the Alternative, Motion for Hearing on Sanction Only on August 16, 2002. Macaulay, by counsel, sought three extensions of time in which to respond to that document. By order dated November 21, 2002, the ALJ granted Macaulay's motion, giving Macaulay until January 1, 2003, to file a response. The ALJ wrote that no further extensions of time would be granted.

and 2) an admission of the allegations in the complaint.⁴ As a result, he issued the order assessing a \$3,750 civil penalty against Macaulay.

By motion dated March 26, 2003, Macaulay, through his attorney, seeks a 60-day extension of time in which to file his appeal brief.⁵ As justification for the extension, Macaulay's attorney states that her client has not provided her with documents because he is too ill to retrieve them from his office, and that she must prepare a motion to vacate a conviction in a first-degree murder case due on April 1, 2003. The agency attorney has not filed any response to the motion for extension of time.

The Rules of Practice in Civil Penalty Actions provide that a party wishing to appeal from an initial decision of an administrative law judge must file a notice of appeal within 10 days of the issuance of that order. 14 C.F.R. § 13.233(a). In addition, the appellant must perfect that appeal by filing an appeal brief within 50 days of the issuance of the initial decision. 14 C.F.R. § 13.233(c). If, as in this case, the ALJ issued a written decision that was served via United States Mail, then the appellant has an additional 5 days to file any notice of appeal or appeal brief under 13.211(e). Under the Rules of Practice, Macaulay's notice of appeal was due no later than February 21, 2003, which is 15 days after the issuance of the order assessing civil penalty on February 6, 2003, and his appeal brief was due no later than April 2, 2003, which is 55 days after the issuance of that order.

⁴ It was alleged in the complaint that Macaulay shipped a hazardous material in his checked luggage on an American Airlines flight from Kingston, Jamaica, to Miami, Florida, without complying with the Hazardous Materials Regulations. This hidden shipment of a hazardous material was discovered during baggage processing at Miami International Airport because the material had leaked and, as a result, the baggage was emitting fumes. The complaint sought a \$3,750 civil penalty.

⁵ The FAA Hearing Docket did not receive the motion for an enlargement of time until April 8, 2003, by which time, the April 2, 2003, due date for the filing of the appeal brief had passed.

Macaulay's motion for an enlargement of time in which to file his appeal brief is denied because there is no evidence in the record that Macaulay ever filed a notice of appeal. No good cause has been shown for this failure to file a notice of appeal.⁶ Indeed, the ALJ had apprised the parties of the requirement to file a timely notice of appeal in footnote 1 of the order assessing civil penalty, and warned specifically that "[i]f there is no timely appeal taken with (sic) 10 days (plus 5 for mailing) this order becomes final."

Therefore, the motion for an enlargement of time in which to file an appeal brief is denied.

MARION C. BLAKEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON⁷
Manager, Adjudication Branch

Issued this 13th day of May, 2003.

⁶ If Macaulay did file a notice of appeal, he may file a copy of that notice plus any proof that it was filed in a timely fashion along with a petition for reconsideration of this order under 14 C.F.R. § 13.234. Under 14 C.F.R. §§ 13.234(a) and 13.211(e), any petition for reconsideration must be filed no later than 35 days after the date of service of this decision.

⁷ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.